



SANTA CLARA POLICE DEPARTMENT

P.O. 316 – 101 N Prescott Street, Santa Clara, NM 88026
Office (575) 537-5464 Fax (575) 537-3176



Lonnie Sandoval
Chief of Police

Cecilia Lawrence
Administrative Assistant

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Darlene Montoya
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Re: Policies and Procedures
Use-of-Force and Officer-Involved Shootings

Please find enclosed the Santa Clara Police Department Policies and Procedures for Use-of-Force. Officers have access to these policies and procedures and are also offered Use-of-Force Classes as part of their biennium certification.

However, the department has no policies and procedures for Officer-Involved Shootings. If an officer-involved shooting were to occur, we would have an outside agency handle the case. There is currently no local training available for officers in Officer-Involved Shootings; and there have been no incidents in Santa Clara since I came to the department in 2011 or prior to my arrival that I am aware of.

If you have any questions or concerns please do not hesitate to contact my office

Sincerely

Chief Lonnie Sandoval
Enc: 10 pages – Use-of-Force

SANTA CLARA POLICE DEPARTMENT

Title: Use of Force

Procedure: 200

PURPOSE:

To establish department guidelines on using both lethal and less than lethal force.

To provide for the proper documentation and investigation of incidents involving the use of force.

POLICY:

It is the policy of the Santa Clara Police Department to provide clear procedures to sworn members regarding the use of lethal force in the performance of their duties. The safety of innocent persons and officers is of paramount importance.

The use of less than lethal weapons is classified as a use of force and is governed by this policy. The officers of this agency are authorized to carry less than lethal weapons so that they may successfully defend themselves and others from combative, resisting and/or violent individuals. A less than lethal weapon is not necessarily a replacement or substitute for other authorized weapons, devices and/or techniques and therefore should be used when, in the officer's opinion, it is the best choice of weapon in a use of force situation. A less than lethal weapon is another tool that can be used at the discretion of the officer when the discretion is made that the use of force is necessary and reasonable under the circumstances. As with any use of force, the officer is accountable to this agency for the use of a less than lethal weapon.

Only force reasonably necessary to defend a human life, effect an arrest or control a person shall be used by sworn officers of the Santa Clara Police Department. The force used by an officer shall only be that which is necessary to overcome the resistance being offered by an officer and to effect lawful objectives.

All sworn personnel must be issued copies of and instructed in the Department's Use of Force procedure before carrying any firearm or other police weapon.

LAW:

Certain state statutes form the reference on which this Department's use of force policy is based. These laws are included in this procedure for the reference purposes. Employees must be aware of prohibitions and restrictions in this procedure that place a higher standard on the use of force that are contained in state statute.

A peace officer... need not retreat or desist from efforts to make a lawful arrest because of resistance to the arrest. He is justified in the use of any force which he **reasonably believes** to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using **force likely to cause death or great bodily harm** only when he **reasonably believes** that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he **reasonably believes** both that:

Such force is necessary to prevent the arrest from being defeated by resistance or escape; and,

The person to be arrested has committed or attempted a **forcible felony** which involves the **infliction or threatened infliction or great bodily harm**, or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.

A. DEFINITIONS:

1. **"Reasonable Belief or Reasonably Believes"** means that the person concerned, acting as a reasonable man, believes that the described facts exist.
2. **"Force which is likely to cause death or great bodily harm is"**
3. the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and the firing of a firearm at a vehicle in which the person to be arrested is riding.
4. **Great Bodily Harm** is serious bodily injury that creates a substantial risk of death, causes serious or permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.
5. **"Forcible felony"** means treason, first degree murder, second degree murder, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against an individual.

PROCEDURE:

B. LEVEL OF FORCE CONTINUUM:

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B: LEVEL OF FORCE CONTINUUM:

1. When the use of force is necessary and appropriate, members shall, to the extent possible, use an escalating level of force and will not employ a more forceful measure unless it is determined that a lower level of force would not be adequate, or such level of force is attempted and actually found to be inadequate. Officer

(s) may begin at the lowest level of force with a suspect and as circumstances present themselves (deadly force) may jump to the highest level or anywhere in between.

LEVEL 1: Officer's Presence- An officer's appearance may be enough to dissuade some persons from engaging in resistive behavior. Factors which contribute to this level include perceptions of the officer's attitude, ability, and self-confidence.

LEVEL 2: Verbal Direction- Dialogue used by an officer can serve to diffuse potentially violent confrontations. It is important to observe that this level concerns WHAT an officer says and HOW he says it. The factors involved in this level include the officer's language, tone of voice, and confidence and/or posture and body language.

LEVEL 3: Empty Hand Control or Use of O/C Spray – “SOFT” techniques which have minimal chance of causing serious injury. These techniques include some pressure point control techniques and joint manipulations. “Hand” techniques that have a probability of causing injuries. These techniques include punches and led strikes. The use of O/C spray is authorized if, in the opinion of the officer, the use of empty hand techniques would pose unnecessary risk if injury to the offender and or the officer or if empty hand techniques would be ineffective in gaining control of the offender.

LEVEL 4: Impact Weapons – An officer may need to resort to the use of an impact weapon to control resistive behavior. These “hand” techniques have a probability of causing injuries. These techniques include weapon strikes.
Impact Weapon: a weapon (e.g. straight baton or collapsible baton) which causes blunt trauma upon striking the soft tissue or skeletal frame of the human body to impair an individual’s mobility or motor functions.

LEVEL 5: Lethal Force – Lethal force can be realized through the application of a variety of measures. Although commonly related to an officer’s use of a firearm, lethal force can also be applied by use of severe hard empty hand control or hard intermediate weapon control techniques.

C. DEADLY FORCE.

1. The use of deadly force must be based upon reasonable belief by the officer that such force is necessary.
2. An officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer’s life, or in defense of any person in immediate danger of great bodily harm.
3. Deadly force may only be used against a “fleeing felon” when the officer reasonably believes that the action is in defense of human life, including the officer’s life, or in defense of any person in immediate danger or great bodily harm.

4. This directive is for internal use only and does not enlarge an officer's civil or criminal liability in anyway. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense concerning third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this Department and then only in a non-judicial administrative setting.

5. Use of deadly force against a fleeing forcible felony suspect is prohibited unless the officer has probable cause to believe that the use of deadly force is warranted based on the limitations as set forth in this procedure.

United States Supreme Court decision U.S. 105 S. Ct. 1694 (1985) (*Tennessee vs Garner*) ruled that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed, non-violent suspect (the case involved a burglary suspect). The Supreme Court further stated that deadly force may be used against an offender who has attempted or committed an offense involving the infliction or threatened infliction of great bodily harm. **Deadly force may not be used against an unarmed, non-violent, property crime offender.**

The United States Supreme Court decision went on to state that when an officer is justified in the use of deadly force he will, **if feasible**, first give a verbal warning. (Example: "Police Officer, Don't move").

D. PROHIBITIONS

1. No shots will be fired from moving vehicles or at moving vehicles unless the situation becomes one of self defense or defense of other lives.
2. No warning shots will be fires.

NOTE: in any incident when an officer uses deadly force which results in death or serious injury please refer to procedure 2.001.

E. LESS-THAN-LETHAL-FORCE:

1. Officers are justified in the use of force reasonably believe necessary to effect an arrest. They need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest.
2. Officers are justified in the use of force against another when and insofar as the officer reasonably believes that such conduct is necessary to defend the officer or another person against the imminent use of unlawful force.
3. Only the amount of force reasonably necessary to effect an arrest or control a person shall be used.
4. Force shall not be used punitively and officers will always discontinue the use of force when the offender stops resisting.
5. A department specified and approved police baton, ASP, bean bag shotgun (non-lethal munitions) or Oleoresin Capsicum chemical agent are the only authorized less-than-lethal weapons. Officers are prohibited from using or carrying blackjacks, saps, weighted gloves, etc.

6. The baton may also be used as a barricade or repelling device in crowd control situations, or a temporary restraining device.
7. If a situation makes necessary the use of flashlight as a defense tool, it will be used in a manner consistent with the use of similarly approved less-than-lethal weapons.
8. Officers will provide for appropriate medical attention to any subject injured as a result of an officer's use of physical force or a lethal or less-than-lethal weapons.
9. Officers are not justified in the use of chokeholds unless an officer reasonably believes that the action is in defense of human life, including the officer's life, or in defense of any person in immediate danger of great bodily harm.

F. USE OF O/C SPRAY

1. O/C spray is considered to be less-than-lethal weapon.

An officer need not attempt hand control before using O/C spray. The officer need only justify that empty-hand skill would not be sufficient or practical to safely and effectively place an offender under control.

O/C spray is generally useful against drug abusers, emotionally disturbed persons, intoxicated persons, violent individual who have reduced sensitivity to pain, and animals.

O/C may be released into a building to effect the removal of a person (s) who refuses to voluntarily exit the building and may also be used when a forced exit is necessary.

Officers should avoid the use of O/C spray in situations where the use of O/C could reasonably cause panic (e.g. hospitals, dark crowded theaters, etc.)

2. Officers who employ the use of O/C spray should do so as a means of obtaining control of an individual and shall never be used for any other unlawful purpose, such as a means of dispensing punishment.

Only that amount of O/C spray reasonably needed to obtain control of an individual should be used. Once the desired results have been achieved, the officer will stop dispensing O/C spray.

Primary targets of O/C spray are the face, eyes, nose, and mouth

3. Officers should consider the following, in addition to specific officer subject factors, when deciding whether or not to use O/C spray in a use of force situation:

Distance from the individual to be sprayed (generally recommended to be between 3 and 12 feet).

Environmental conditions (e.g. wind, rain, snow, etc.)

Potential hazards to the individual after being sprayed with O/C that could cause injury (e.g. walking into traffic, falling off elevated surfaces or stairs, etc.)

The presence of infants (birth to two years of age). If infants are in the immediate area the use of O/C spray should be avoided if possible.

4. After spraying an individual with O/C, and control of that person has been obtained, the officer will make reasonable efforts to allow the individual relief from the discomfort associated with the application of O/C. Reasonable decontamination or relief efforts may include (as practical under the circumstances of a situation):

Calming the individual;

Removing the person from the affected area to an area of fresh air or other for of ventilation;

Instructing the individual to flush affected areas with saline solution or clear water;

Allowing the individual to wash exposed skin with soap or water;

Allowing the individual to remove contact lenses;

Advising the individual not to rub affected areas or to apply any type of salve to affected areas;

Paramedics will be summoned in all cases as a precautionary measure.

5. When an offender who is threatening the use of O/C spray (or any other chemical agent) attacks an officer, the officer should try to avoid being sprayed. Should an officer need to use force on an individual who is threatening the use of O/C spray, such force should be necessary and reasonable.

G. USE OF IMPACT WEAPONS

1. Impact weapons are considered to be less-lethal-weapons.

An officer need not attempt empty-hand control or the use of O/C spray before using an impact weapon.

The officer need only justify that empty-hand control or the use of O/C spray would not be sufficient or practical to safely and effectively place an individual under control.

2. Officers who employ an impact weapon should do so with the intent to temporarily disable an individual and not to cause permanent injury or dispense punishment.

Primary targets of a strike from an impact weapon should be an individual's major muscle groups, motor points, abdomen, limbs and/or joints.

Striking an individual with an impact weapon in the groin, any part of the body above the shoulders, or the back is permitted **only** in situations where deadly force would be justified.

3. After striking an individual with an impact weapon, and control of the person has been obtained, the officer will afford the individual medical treatment should, in the officer's judgment, medical treatment be required or if requested by the person himself.

4. Impact weapons are permitted to be used for other lawful purposes during an officer's duties (e.g. gaining entry to vehicles, gaining entry to residences, in defense of vicious animals, etc.).

5. If there is any emergency, other objects or pieces of equipment may be used as an impact weapon "of necessity" (e.g. flashlights, tree branches, metal or plastic pipes, or tubes).

H. REPORTS AND INVESTIGATION:

1. Any officer who discharges a firearm for other than training or recreational purposes will submit a department memorandum. A Use of Force report will be submitted when an officer:

Takes any action than results in, or is alleged to have resulted in, injury or death of another person;

applies force through the use of lethal or less-than-lethal weapons; and

applies force through the use of soft or hard empty hand techniques.

2. The Use of Force report will fully document the incident and be submitted to the officer's immediate supervisor within a reasonable amount of time.

3. The shift commander will review the Use of Force report and forward a memorandum to the Division Commander evaluating the officer's use of force.

4. The Use of Force report will be reviewed by the shift commander, the Division Commander and the Chief of Police.

5. Accidental discharges will be documented by the officer and investigated by the Supervisor in charge at the time. The officer's report should fully explain the circumstances surrounding the discharge and the supervisor's report should include recommendations for disciplinary action or training.
6. When shots are fired the shift commander will immediately respond to the scene and, as soon as possible, notify the Chief of Police through the appropriate Division Commander.
7. In instances where use of force results in death or injury, the Criminal Investigations Unit Supervisor may conduct an independent investigation, if deemed necessary by the Chief of Police.
8. All findings, recommendations, and reports of the Criminal Investigations Unit Supervisor will be forwarded to the Chief of Police.

9. The following checklist may be used as a guide to ensure complete details of the incident:

Time and date of incident;

Place of occurrence; address and location;

Officer involved; name, rank, and badge number;

Suspect involved; address, name, D.O.B., sex, race, and telephone number;

Person arrested; address, name, D.O.B., sex, race, and telephone number;

Place of arrest;

Complainant's name, address, D.O.B., sex, race, and telephone number;

Type of offense and case number;

Investigating supervisor, rank, star number;

Original reason for contact with suspected by officer involved;

Injuries; be specific as to nature, extent, and how it was inflicted (e.g. three inch lacerations, right side of head), where and who treated;

Witnesses to the fact; address, name, D.O.B., sex, race and telephone number; and

Statement of witness should be made a part of this report but need not be incorporated in its entirety.

10. Upon completion of a use of force investigation, the officer's Division Commander will submit a report as to:

Propriety of action taken;

Endorsement of action taken; and

Outline corrective measures taken or suggestions, if deemed necessary.

11. This report shall be immediately routed as follows:

Original to Chief of Police; and

First copy to the shift commander.

12. This report shall be submitted immediately. Necessary supplemental reports may be forwarded within a reasonable length of time.

13. Any officer whose use of force results in a death or serious physical injury will be immediately detailed to a staff assignment pending an administrative review of the incident. The purpose of this assignment is to protect the interest of the community and the officer.

14. An annual audit of all Use of Force reports filed will be conducted by the Patrol Division Commander. This report will investigate any patterns or trends that could indicate training needs and/or procedure modifications necessary.

15. The Chief of Police will determine if a Firearm Use Committee shall be convened. To review any discharge of a department firearm.

16. Four sworn members of the Department will comprise the Firearms Use Committee. One Commander, one Sergeant, one Patrol Officer/Range Officer, and one Patrol Officer. These members will be appointed by the Chief of Police to review and make recommendations concerning the use of firearms by Department personnel. Such members will be answerable only to the Chief of Police.

17. Whenever a member of the Department is involved in the Use of Force, of any kind, on or off duty, in another jurisdiction, he shall, as soon as possible, notify the shift commander and relay the details of the incident. The shift commander shall notify the Chief of Police, through the Division Commander, who may assign a supervisor to investigate the incident.

SUMMARY

Nothing stated in the procedure grants immunity to the officer involved since each case must be met and dealt with according to individual circumstances. Department personnel are reminded that the safety of innocent persons and bystanders must be given primary consideration whenever the use of firearms is contemplated.